

No. 9(1) 82-6Lab/11259.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Saraswati Sugar Mills, Yamuna Nagar.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD
Reference No. 233/1981

Between

SHRI KULDIP SINGH, WORKMAN AND THE MANAGEMENT OF M/S THE SARASWATI
SUGAR MILLS, YAMUNA NAGAR.

Present :—

Shri Rajeshwar Nath, for the workman.

Shri R. L. Gupta, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Kuldip Singh and the management of M/s The Saraswati Sugar Mills, Yamuna Nagar, by order No. ID/YMN/53/81/34996, dated 22nd July, 1981, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of service of Shri Kuldip Singh was justified and in order ? If so, to what relief is he entitled ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleading of the parties, the following issues are framed by my order, dated 15th February, 1982 :—

- (1) Whether the workman resigned his job of his own ? If so, to what effect ?
- (2) Whether the resignation was obtained under duress and force ?
- (3) Whether the termination of service of Shri Kuldip Singh was justified and in order ? If to, to what relief is he entitled ?

And the case was fixed for the evidence of the management who examined Shri Man Mohan Singh, Cane Manager of respondent as MW-1 and Shri Satya Pal, Time Keeper as MW-2. The workman examined himself as his own witness. Arguments were heard.

Issue No. 1 and 2.—Issue No. 1 and 2 are inter-related and therefore, these are decided together.

MW-1 deposed that the workman had submitted the resignation,—vide Ex. M-1 which was recommended by him at point 'A'. The General Manager accepted the same. The acceptance was at point 'B'. The workman had told him that he wanted to establish his own business, therefore, he had submitted his resignation. The General Manager had informed the workman for acceptance of his resignation,—vide letter Ex. M-2. U.P.C. receipt of the same was Ex. M-3. In cross examination, he replied that the workman had brought the resignation letter to him. He was in the employment prior to 1979 when he himself joined the service. There was no complaint about the work of the concerned workman. He denied the suggestion that the workman was forced to write resignation as far as he could say. There was none with him at the time of resignation. In cross examination, he replied that no representation of the workman was received by him on 12th March, 1981, but he was told by the General Manager about the same. M.W.-2 deposed that the workman attended duty of the first half of 28th February, 1981. He used to initial in the attendance register. Photo copy of the attendance sheet was Ex. M-4. Letter of acceptance was Ex. M-2.

The concerned workman deposed that Shri Sunder Lal shift incharge had told him to see the Cane Manager on 1st March, 1981. When he went there Shri A.P. Jain was present there and handed pen and paper to him. The Cane Manager threatened him for police action and forced him to write resignation. He made a complaint on 12th March, 1981. There was grievance to Shri Nar Singh Shift Incharge for not making bogus entries for cane not supplied by him. In cross-examination, he replied that he could not give any reason as to why he made complaint after 25 days. He admitted that he had not mentioned the name of Cane Manager and Shri Sunder Lal in the demand notice. He had never made complaint in the police. He had not mentioned the name of Shri Nar Singh in the complaint.

The learned representative for the management argued that there was no complaint made by the concerned workman about the duress in the resignation. He drew towards the discrepancy in the claim statement and demand notice. On the other hand, the learned representative for the workman argued that the workman was forced to write resignation which was never accepted and had not become operative.

I have gone through the complaint and find that the workman was called by Shri Sunder Lal Shift Incharge. There was no mention of the name of Shri Nar Singh in the complaint. In the demand notice, there was no mention of the Cane Manager. It was given that Shri Anand Parkash Jain forced him to write resignation and also threatened to involve in a criminal case. It was also given that he got his signature on a paper. There was no mention of the grievance of Shri Nar Singh in the demand notice either. I gather from the record that the workman submitted his resignation of his own and later on changed his mind and made a complaint. I find no merits in the contention and hold that there was no duress in the resignation rather it was a voluntary act. The workman was not entitled to any relief.

The 20th October, 1982.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1133, dated the 29th October, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No.9(1)82-6Lab/11260.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/S Sarswati Sugar Mills, Yamunanagar.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD
Reference No. 234/1981

between

SHRI RAJINDER KUMAR, WORKMAN AND THE MANAGEMENT OF M/S THE SARASWATI
SUGAR MILLS, YAMUNANAGAR

Present : —

Shri Rajeshwar Nath, for the workman.
Shri R. L. Gupta, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Rajinder Kumar and the management of M/s the Sarawati Sugar Mills, Yamuna Nagar, by order No. ID/YMN/54/81/35002, dated 22nd July, 1981, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services/dismissal of Shri Rajinder Kumar was justified and in order ?
If so, to what relief is he entitled ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following were framed by my order, dated 15th February, 1982:—

- (1) Whether the workman resigned his job of his own ? If so, to what effect ?
- (2) Whether the resignation was obtained under duress & force.
- (3) Whether the termination of services/dismissal of Shri Rajinder Kumar was justified and in order ? If so, to what relief is he entitled ?

The management was called upon to lead evidence on issue No.1 and 2 who examined Shri Man Mohan Singh, Cane Manager as MW-1 and Shri Satya Pal, Time Keeper, as MW-2. The workman examined himself as his own witness. Arguments were heard.

Issue No. 1 and 2.—Issues No. 1 and 2 are inter-related and therefore, these are decided together.

MW-1 deposed that he was seasonal clerk under him. He had submitted resignation copy Ex.M-1. He had recommended and sent the same to the General Manager for sanction. He had asked the workman about cause of the resignation and he had replied that for domestic reasons he had to make the resignation. Information of acceptance of the resignation was Ex.M-2 which was sent to the workman under U.P.C. receipt Ex.M-3. He was told that the resignation will be accepted and he may collect his dues after two or three days. In cross examination, he replied that the workman had brought resignation Ex.M-1 to him. He was in the employment prior to 1979 when he himself joined mills. There was no complaint regarding his work. He denied the suggestion that the workman was rebuked and intimidated for police action in case he did not resign. He further replied that as far as his memory goes Shri A. P. Jain Cane Office Incharge was present at the time of resignation. The workman was informed at about 12.00 noon that his resignation had been accepted. He had received no representation from the workman but he was toled by the General Manager, about the same. He did not remember when a substitute workman was employed. MW-2 deposed that he had brought attendance register. The workman was marked present upto first half of 28th February, 1981. He used to initial in the attendance register. Photo copy of the same was Ex.M-4. In the month of March, was shown "resignation accepted,—vide letter No. CS/294/6920, dated 2nd March, 1981", copy of which was Ex.M-3.

The concerned workman deposed that he joined service on 13th Jannary, 1975. When he went for duty on 28th February, 1981 he was told by Shri Anand Parkash Jain to see the Cane Manager. When he went there, the Cane Manager asked him to submit his resignation otherwise a police case will be instituted against him. He made complaint to the General Manager who asked him to come on the next day and then there happened to be strike of cane growers. He had denied of making payment of cane subsidy in a wrong manner in 1978 on asking of Shri Jain, therefore, he forced him to write resignation. In cross examination, he admitted Ex.M-1 his resignation. He denied that he had received information about the acceptance of resignation on the same day. The delay in asking the complaint was that he was seeking an interview with the General Manager. He had also gone to the police. His complaint was Ex.M-5. He had never made a complaint during the period of 1978 to the day of resignation against Shri Jain.

The learned representative for the management argued that there was no complaint made by the concerned workman about the duress in the resignation. He drew towards the discrepancy in the claim statement and demand notice. On the other hand, the learned representative for the workman argued that the workman was forced to write resignation which was never accepted and had not become operative.

I have gone through the documents and find that the workman had submitted his resignation and the same was written in his own hand on 28th February, 1981. In the complaint he mentioned that Shri Anand Prakash had taken him to the office of the Cane Manager and forced him to write his resignation by handing pen and paper. He had also threatened for police action whereas in his statement he had levelled allegation of force against the Cane Manager. The cause of resignation is stated by the workman some grievance of the year 1978. This fact is hardly be lievable because there had been no grievance with the same officer during years preceding resignation. I gether that the workman resigned his job of his own will and later on changed his mind and made a complaint. I find no merits in the contention and hold that there was no duress in the resignation rather it was a voluntary act. The workman was not entitled to any relief.

Dated : 20th October, 1982,

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1134, dated 29th October, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under Section-15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6Lah/11262.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Jain Plastic Industries, Sector 24, Industrial Area, Faridabad.

BEFORE SHRI M.S. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 287 of 1979

between

SHRI NARINDER KUMAR, WORKMAN AND THE MANAGEMENT OF M/S JAIN PLASTIC
INDUSTRIES, SECTOR-24, INDUSTRIAL AREA, FARIDABAD

Present :

Shri Parshotam Dass, for the workman.

Shri K.P. Aggarwal, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Narinder Kumar and the management of M/s Jain Plastic Industries Sector-24, Industrial Area, Faridabad, by order No. ID-79/41062, dated 18th September, 1979, to this Tribunal for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947. :—

Whether the termination of services of Shri Narinder Kumar was justified and in order ? If not, to what relief is he entitled ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleading of the parties, the following issues were framed by my learned predecessor on 31st December, 1979 :—

- (1) whether the workman resigned his job of his own ?
- (2) if issue No. 1 is not proved, whether the termination of services of the workman was justified and in order ?
- (3) Relief.

And the case was fixed for evidence of the management who examined Shri Udey Bhan Gupta, Accountant as WW-1. The workman examined Shri Surinder Pal Singh, Clerk o/o Dy. Regional Provident Fund, Faridabad as WW-1, Shri Shiv Kumar Head Clerk c/o the Labour Officer, Sector-15, Faridabad as WW-2 and Shri Parshotam Lal Clerk c/o Factory Inspector, Faridabad as WW-3. Arguments were heard, and Shri Narinder Kumar workman as WW-4. Arguments were heard.

Issue No. 1.—MW-1 deposed that the workman had resigned on 13th January, 1978, copy of which was Exhibit M-1. The resignation was accepted by Shri J.P. Jain Partner. The workman admitted his writing and signatures on the letter of resignation. The workman had become partner in Oriental Packers and Press. Therefore, he resigned. The elder brother of the workman was also partner in that firm. Shri J.P. Jain was Chartered Accountant and had prepared the documents of partnership of the workman. He had also operated account as partner in Bank of India, Faridabad. The workman had received Rs. 234.50. Voucher and payment was admitted by the workman. Shri J.P. Jain was real uncle of the workman. In cross-examination, he stated that the letters were printed from the firm of the workman. Exhibit W-1 was not signed by any officer of the company. Exhibit W-3 and W-4 might have stamp of the company. He denied Exhibit W-4 to be that of the company. He admitted that no date was recorded on acceptance of letter of resignation. Letter of acceptance was not communicated to the workman but his signature was obtained.

WW-1 deposed that the provident fund contributions were started from 1st November, 1973. In withdrawal form Column No. 5, the reason of withdrawal was shown retrenchment. Shri Padam Kumar Jain was, partner of the firm who signed the paper of the company. No provident fund was deposited from April, 1975 to September 1977. It was contributed after 1977. In form No. 10, the reason of leaving service was shown retrenched "full and final". In cross-examination, he replied that in case of service his provident fund should be deposited. According to Provident Fund Scheme, there was separate benefit for dismissed or retrenched or term inated or resigned categories. In this case, there was a deduction of 25% from employer share and no letter was written against deduction. There was form 13 in the file which was filled in by the workman. In column No. 4 of the form No. 13, date of leaving service was given with the previous employer as April, 1975 and in column No. 8 date of joining as September 1977. For the period provident fund was not deposited, form No. 13 was received. The workman had applied for withdrawal of provident fund on 3rd May, 1979 and the payment was made to the workman on 25th May, 1979. The word "retrenchment" in form No. 10 was not conclusive proof for giving the workman full benefit. WW-2 deposed that the conciliation proceeding were held. According to the conciliation report, the original letter of resignation was not shown. WW-3 deposed that according to this record Shri P.K. Jain Occupier and Shri Pardeep Jain was shown as Manager. In January 1978 and April, 1978 Shri Pardeep Jain was Manager and Occupier. In the file in letters, dated 14th January, 1978 and 23rd September, 1978, two different signatures shown as partners appeared. In challan dated 16th March, 1981, Shri P.K. Jain was shown as occupier and manager. In cross-examination, he replied that he could not tell if the firm was a partnership concern or public concern. In the inspection report dated 6th October, 1977, in column No. 9-C, the name of Shri V.B. Gupta Accounts Clerk, was shown. Their signature could not be read. WW-3 deposed that his service was terminated on 20th February, 1978. He submitted his demand notice Exhibit W-6. He had submitted Exhibit M-1 on 12th January, 1978, because the management had given him trouble. He had submitted the resignation but the same was not accepted. He was never offered his full and final accounts. He had received Rs. 234.50,—vide Exhibit M-2 wages of 20 days of February, 1978. He recognised the signature of Shri Pardeep Kumar Jain on Exhibit W-1 and W-3. In cross-examination, he replied that he was matriculate. Exhibit M-1 was in his hand. He submitted it to Shri Padam Kumar Jain. His signature appeared on Exhibit W-7. Shri Dharam Paul Jain was his elder brother who had printing business in Sector-3. He had taken training of printing from his elder brother after one year of leaving the service. He admitted that photo copy of partnership deed of his and Dharam Paul was Exhibit M-4. He denied that he remained into service upto 26th April, 1975 and went to Ludhiana. in Jain Plastic Enterprise. He could not tell why his wages, E.S.I. and Provident Fund was not paid. He denied that he rejoined in March, 1977. He denied that he had resigned his job.

The learned representative for the management argued that the workman had tendered his resignation from service which was accepted by the management and he was paid his wages. On the other hand, the learned representative for the management argued that the resignation was not accepted by the management and he remained in service. He argued that word "full and final" does not exist on the voucher of payment.

I have gone through documents and find that Exhibit M-1 was resignation letter which was admitted to be written by the workman concerned and signed by him. It was dated 13th January, 1978. The workman had admitted that he had submitted resignation. Voucher Exhibit M-2 shows unpaid salary for the month of February, 1978. There are words full and final settlement in terms of resignation and workman has accepted his signature on the stamp. In the provident form date of leaving service was 20th February, 1978. The workman had admitted his receipt of provident fund. It is admitted by him that he had entered in the partnership with his elder brother,—vide Exhibit M-4. Partnership deed was dated 30th November, 1978. According to the demand notice, the service of the workman was terminated on 20th February, 1978. This date resembles the date on the provident fund form. The workman submitted his demand notice on 22nd June, 1979. These all goes to show that he raised demand after one year and four months. At that time he was in partnership business. Admission of documents needs no proof and factum of resignation was admitted by the workman. His contention that the same was not accepted at that time, has no force. He has himself admitted that the management asked him to continue. It

goes to prove that the resignation was accepted later on and he was paid on 20th February, 1978. This fact is also proved by entry in form No. 5 of provident fund scheme. In the circumstances, I find that the workman resigned his job.

Issue Nos. 2 and 3.—There is no need of any decision on the other issues because I have held that the workman has resigned his job.

While answering the reference, I pass my award that the workman is not entitled to any relief.

The 19th October, 1982.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 1136, dated 29th October, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)-82-6 Lab/11269.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Melco Precision, Link Road, Faridabad.

**BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD**

Reference No. 73/79

Between

**SHRI BANSU RAM, WORKMAN AND THE MANAGEMENT OF M/S MELCO PRECISION,
LINK ROAD, FARIDABAD**

Present :

Shri Mohit Kumar Bhandari, for the workman.
Shri S.L. Gupta, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Bansu Ram and the management of M/s Melco Precision, Link Road, Faridabad, by order No. 9884, dated 28th February, 1979, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Bansu Ram was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my framed predecessor on 6th November, 1979 :—

- (1) Whether the workman abandoned his job of his own?
- (2) Whether the workman is gainfully employed?
- (3) Relief.

And the case was fixed for evidence of the management who was offered many opportunities and his evidence was closed by order. The workman examined himself as his own witness. He deposed that he joined service in 1971. He was issued chargesheet Ex. W-1 which replied,—vide Ex. W-2. He was not allowed duty from 18th March, 1977. He was not given any notice for domestic enquiry. He had written letter Ex. W-3 to the management. Postal receipt was Ex. W-4. He again wrote letter Ex. W-5 and postal receipt was Ex. W-6 A.D. Card was Ex. W-7. He was not given any dismissal letter or notice pay. In cross-examination, he denied that he did not sent the above referred letter to the management. He denied the suggestion that his service was terminated due to his absence. He admitted that for the last about one and half years he was working in Kalkaji Engineering at Rs. 300 per month. He was casual worker there. He denied that at present his wages was Rs. 400 per month.

Issue Nos. 1, 2 and 3.—Because the management did not lead any evidence, therefore, I took all the issues together.

In the written statement the management has taken the plea that the present case was a case of voluntary abandonment of service by the claimant. It was also contended that the workman was called through call letter to join his duty but he did not turn up and finally his name was struck off from the roll. I find that the workman placed on record copy of chargesheet dated 18th March, 1977 (Ex. W-2) which was the replied. The management also issued him letter for domestic enquiry but the management did not mentioned the above facts in the written statement. It has failed to prove its contention regarding abandonment of service.

It is into evidence that the workman was not paid any retrenchment compensation or notice pay. Therefore, I find that the termination of service is unjustified and not in order. He was entitled to reinstatement with full back wages. It is admitted by the workman that he was working in M/s Kalkaji Engineering Company at Rs 300 per month but in the present management, according to the written statement and the workman his wages was Rs. 350 per month at the time of termination of his service. Therefore he will be entitled to receive the difference of wages for the period he was in the employment of M/s Kalkaji Engineering Company. The management will also pay him the cost of this litigation which is quantified at Rs. 500 (Rs. Five Hundred only). I award accordingly.

M.C. BHARDWAJ,

Dated the 30th September, 1982.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1089, dated the 28th October, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6 Lab./11348.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. The Sonapat Co-op. Sugar Mills Ltd., Sonapat.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 1 of 81

between

SHRI HUKAM SINGH, WORKMAN AND THE MANAGEMENT OF M/S. THE SONEPAT CO-OPERATIVE SUGAR MILLS LIMITED, SONEPAT

Present:—Shri M.S. Rathi for the workman.

Shri Bhagat Singh for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/SPT/142-80/56928, dated 18th November, 1980, under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Hukam Singh, workman and the management of M/s. The Sonapat Co-operative Sugar Mills, Sonapat. The term of the reference was.—

“Whether the termination of services of Shri Hukam Singh was justified and in order? If not, to what relief is he entitled?”

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance in response to the same on 23rd February, 1981. The parties filed their respective pleadings on the basis of which the following issue was framed:—

1. Whether the termination of services of Shri Hukam Singh was justified and in order? If not, to what relief is he entitled?

The management examined Shri Sahib Singh Dahiya, Assistant Cane Accountant as their only witness and closed their case. The workman examined himself as his only witness and closed his case. I heard the learned representatives of the parties and have also carefully perused the evidence on record and decide the issue as under:—

Issue No. 1.—Shri Sahib Singh appearing as MW-1 has deposed that the workman was appointed as Sugar Sales Clerk in the month of December, 1976, who was doing the job of weighing the sugar bags and such bags after being weighed were sent to the central warehousing corporation for safety and storage. These bags were reweighed in the warehouse. It was found in the month of January, 1978 that the bags so sent were short in weight. The explanation of the workman was called,—vide letter Ex. MW-1/1, which was replied by the workman,—vide Ex. MW-1/2 and on finding the same unsatisfactory the services of the workman were terminated on 16th February, 1978,—vide Ex. W 1. In his cross examination he has admitted as correct that the workman was given one month notice pay and as regards the service compensation he was not aware if the same was paid or not to the workman. He denied as incorrect that about 25 to 30 workers were victimised in 1978-79. No enquiry was conducted. The facts are almost admitted that workman was appointed on probation for a period of one year against the permanent post on condition that the management had a right to pass order within one month after the expiry of probation period about confirmation or termination and if no orders are passed within the expiry of one month of the probation period he shall be deemed to have been confirmed on the post. The management has contended that the services of the workman were terminated as per terms of his appointment by way of discharge simplicitor on 16th February, 1978. From the evidence adduced by the management it is clearly established that the workman was removed from service on charges of negligence calling for his explanation for alleged shortage in weight of sugar bags weighed by him. The management has in fact terminated the services of the workman for the above misconduct but without providing reasonable opportunity of hearing to the workman and without holding domestic enquiry. This is against the principle of natural justice. The management has taken the advantage of terms and conditions contained in the contract of service and the discharge simplicitor is in fact the order of dismissal and amounts to unfair labour practice further amounting to the victimisation of the workman. It has also come in evidence that no retrenchment compensation was paid to the workman and he had completed one year of continuous service. The order of termination in the present form is an order of retrenchment and when no mandatory provision contained in 25 F(b) are followed it is fatal for the termination and the workman shall be deemed to be in service as if no termination was ever effected. Looking from any angle the termination of the workman is neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. No order as to costs. The reference is answered and returned accordingly.

Dated 29th October, 1982.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

Endst. No. 2341, dated 30th October, 1982.

Forwarded four copies to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 9(1)82-6Lab/11366.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the Management of M/s. Flovel Pvt. Ltd. 13/1 Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference Nos. 111 and 112 of 1981

Between

SHRI BHAYA LAL AND SHRI CHHEDI LAL, WORKMEN AND THE RESPONDENT
MANAGEMENT OF M/S. FLOVEL PRIVATE LTD., 13/1, MATHURA ROAD, FARIDABAD

Shri Mohit Kumar Bandari for the workman.

Shri H.R. Dja for the respondent management.

AWARD

This reference No. 111 & 112 of 1981 have been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/40/81/10085, dated 3rd March, 1981 and ID/FD/41/81/10073, dated 3rd March, 1981 under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Bhaya Lal and Shri Chhedi Lal, workmen and the respondent management of M/s. Flovel Private Ltd., 13/1, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Chhedi Lal was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties on receiving these references. The parties appeared and filed their pleadings. The case of the workmen according to their demand notices and claim statements is that they were working in the factory for the last four years as operator at salary of Rs. 250 per month but terminated on 21st December, 1979 without any reason or cause which was illegal and the claimants are entitled for their reinstatement with back wages and continuity of services.

The case of the respondent according to the written statement is that the reference is illegal and not sustainable because the respondent retrenched the claimants due to reasons. The claimants were engaged as helpers in the year 1976 and used to receive Rs. 250 per month due to shortage of power and raw material and lack of funds. The management has no job to offer and they became surplus so retrenched on 11th December, 1979. They were offered compensation but they refused to accept the compensation and notice pay which was even sent through money orders. The retrenchment was legal and the respondent did not terminate the services of the claimant.

On the pleadings of the parties, following issue was framed :—

Whether the termination of services of the workmen was proper, justified and in order ? If not, to what relief are they entitled ?

These two references were consolidated on the request of the parties as the subject-matter and the parties against whom the reference was sent are the same. The request was acceded and the cases were consolidated and it was ordered that the evidence shall be recorded in Shri Bhaya Lal case in Reference No. 111 of 1981. My findings on the issue is as under :—

Issue No. 1.—The representative of the respondent argued on this issue is that these employees were found surplus and notice Ex. M-1 was displayed on 17th December, 1979 as stated by Shri V.M.G.K. Nair, Personal Officer as MW-1. The list of employees was prepared which is Ex. M-2 and Ex. M-3 is a report sent to the Government on form 'P'. Ex. M-2 and was given to Shri Chhedi Lal and Ex. M-5 was given to Shri Bhaya Lal but they refused to take these letters which was sent through registered post which are Ex. M-6 and M-7, the postal receipt and registered A.D. The statements of accounts were prepared after the retrenchment which are Ex. M-8 and M-9. The concerned workmen did not accept the retrenchment compensation after that which were sent through money orders. The receipts of money orders are Ex. M-10 and M-11. The money orders were received backs undelivered. The management was facing the power and funds and raw material shortage so these workmen were retrenched alongwith others. The respondent did not receive the money back so they sent the letter to the Post Master which is Ex. M-12 and M-13. Ex. M-14 and M-15 are the reply of the post master. So the workmen were retrenched according to law and they were not removed or retrenched.

The representative of the workmen argued on this issue that the respondent has not complied with the provisions of section 25-F of the Industrial Disputes Act, 1947. They have not displayed the list of the employees to be retrenched according to law and not proved on the file that they displayed it on the notice-board as Shri Bhaya Lal and Shri Chhedi Lal, WW-1 and WW-2 denied this fact that no list was displayed on the notice-board after the objection of the workmen. The claimants were retrenched from the service from 21st December, 1979 and the form 'P' information for retrenching the workers were sent by the respondent on 22nd December, 1980 as clear from Ex. M-3 for retrenching these claims which is not legal. The respondent should have informed the Government before retrenching these claimants. The respondent gave no letter to the claimants as they have denied in their cross-examination that Ex. M-4 and M-5 were not received by them. The respondent has written on these exhibits "Refused to Accept". There is no witness to prove that the workmen were actually given these letters and they refused these documents and prepared after thought and no such letters were given to these workmen in which they can object for their retrenchment. So no opportunity was given to be heard by the respondent to the claimants. The respondent prepared no account for retrenchment before the date of retrenchment as there is no date on the accounts which are Ex. 8 and M-9. The respondent has failed to prove this fact that these accounts were prepared and given to the workmen to take their compensation from the office. The money orders sent by the respondent were received back after a long time because they were sent on a wrong address and not on the address given by the workmen. These all things prove from the statement of workmen as they have stated in the Court. Shri Bhaya Lal has stated in his statement as WW-1 that he joined the services of the respondent on 1st July, 1976 and was getting a pay of Rs. 250 per month and was removed on 21st December, 1979 without giving any notice or compensation of retrenchment. He has further stated that no seniority list was displayed on the notice-board nor it was given to the workmen. The workmen were active members of the union and the respondent wants to remove from the service so they prepared

the scheme to retrench the helpers. As admitted by the respondent that Shri Radhey Sham, Dewan, Bal Raj and Shri Shree Kishan are working as helpers at present in the factory and they are shown junior to the Claimants in the list given by the respondent which is Ex. M-2 which shows that the juniors are working in the factory. The respondent witness has further stated that the respondent have not advertised the posts of helpers after the retrenchment and no helper is employed after retrenchment. When these were shown junior to the claimants are still working in the factory it clearly shows that the claimants were illegally retrenched due to the fact that they want these two claimants to be removed from the job. He further argued that these workmen were retrenched due to the fall of production below. He has further stated that he has not brought any record to prove this fact. He further admitted in his cross-examination that after 2 and 3 months the production was normal. This fact also clears that there was no fall in the production and these workmen were terminated due to union activities. The respondent should have produced the whole record of production to prove this fact that there was fall in production due to shortage of electricity, raw material and funds but when they have failed to prove this fact that there was shortage of all these things, then they have no case of retrenchment except the victimisation of these workmen. The respondent witness has further stated in his cross-examination that Shri Radhey Sham is working as Assistant Fitter and Shri Diwan Singh, Assistant Drill man, Shri Bal Raj as Hammerman, Shri Shree Kishan as Assistant Fitter. The workman Shri Bhaya Lal has stated in his statement that Shri Radhey Sham, Bal Raj, Diwan Singh, Shree Kishan and Shiv Nath are working in the factory which were junior to him. He further argued that on one hand the respondent witness states that they did not employ any helper after the retrenchment and on the other hand admits in his cross-examination that these workmen are working in the factory. It shows that the juniors were not retrenched at the time of retrenchment of these workmen which is also illegal according to retrenchment rules "First come Last go". It is very clear from the list of these workers that they were junior to these claimants. This shows that the case of the respondent is false and the respondent witness cannot be believed. The workmen have denied the suggestion of the respondent representative that they received any notice of retrenchment or given any retrenchment compensation at the time of retrenchment which clears that the respondent has not complied with the provision of retrenchment and retrenchment was illegal in the eye of the law. He further argued that when the respondent witness states that the production was normal after two and three months of the retrenchment then the respondent could lay off these workmen for such a short period or they can be called after the normal production which was not done by the respondent. He further argued that for the sake of arguments if it is accepted that the workman stated above were retrenched with these workmen then how they are still working in the factory without their re-employment and if they were re-employed the claimants should have given the chance. He further argued that Shri Cheddi Lal corroborated the statement of Shri Bhaya Lal who has stated as WW-2.

* After hearing the arguments of both the parties, and going through the file, I am of the view that the arguments put forward by the representative of the workmen has some force because he has argued the case in a very reasonable manner. The persons who are admittedly working in the factory are juniors according to the list of seniority of the respondent Ex. M-2 and when they are working at present then the respondent should have explained the position that how they have come to work after the retrenchment. The claimants were not offered, the retrenchment compensation at the time of retrenchment which is a mandatory provision of section 25-F of the Industrial Disputes Act. The respondent has failed to prove the retrenchment of these claimants so it is a termination and without any justification and the claimants are entitled for their reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

Dated the 22nd October, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.

Endorsement No. 2294, dated 2nd November, 1982.

Forwarded (two copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh, as required under sub-section (4) of section 33-C of the I.D. Act.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.